IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

RP. No. 71 of 2007()

AGAINST THE JUDGEMENT IN WA.1933/2004 Dated 29/10/2004
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REVIEW PETITIONER/PETITIONER:

T.K. VIBHURAJ,
THAZHATHUMURAYIL HOUSE, K.R. PURAM P.O.,
CHERTHALA, ALAPPUZHA DISTRICT.

BY ADV. SRI.C.S.MANU

RESPONDENTS: RESPONDENTS:
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1. E.M. JOSEPH,
KALANJITHODATHIL, MANGANAM, KOTTAYAM DISTRICT.
2. JOINT REGIONAL TRANSPORT OFFICER,
CHERTHALA.
3. DEPUTY TAHSILDAR (R.R.), CHERTHALA.
4. VILLAGE OFFICER,
KUTHIYATHODU VILLAGE, CHERTHALA.
5. DISTRICT COLLECTOR, ALAPPUZHA.

BY GOVT PLEADER FOR TAXES SRI GEORGEKUTTY MATHEW

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD
ON 22/01/2007, THE COURT ON 02/02/2007 PASSED THE
FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C.J. & M.N.KRISHNAN, J.

R.P. No 71 of 2007 in W.A. No 1933 of 2004

Dated: 2nd February, 2007.

O R D E R

Radhakrishnan, Ag. C.J.

This review petition is preferred by the appellant in W.A. No 1933 of 2004 stating that some of the points urged by him were not considered by the Division Bench while disposing of the appeal. Review petitioner is aggrieved by the demand notice Ext. P2 dated 26.08.1998 issued to him demanding motor vehicle tax of Rs 48,450/- in respect of vehicle number KL 4A-2314 for the period from 1.1.1997 to 30.9.1998. According to the review petitioner, he had transferred possession of the vehicle to the first respondent on 29.03.1996 and the fact of transfer was intimated to the second respondent on 7.9.1998. Challenge was repelled by the learned single judge in O.P. No 19600 of 2000 which was affirmed by the Division Bench in W.A. No 1933 of 2004 holding that the review petitioner is liable to pay the tax demanded since he continued to be the registered owner of the vehicle.

2. Sri C.S. Manu, counsel appearing for the review petitioner

submitted that a conjoint reading of Section 3 and Section 9 of the Kerala Motor Vehicles Taxation Act would show that transferor of the vehicle is not liable to pay tax which fell due after the transfer of the ownership and possession. Counsel submitted that the presumption under the proviso to Section 3 of the Act is rebuttable and the petitioner as per Ext. P2 has proved that he has intimated the transfer of the vehicle to the transferring authority and thus rebutted the presumption of ownership of the vehicle.

3. Sri Georgekutty Mathew, Government Pleader appearing for the State submitted that there is no reason to review the judgment since all the aspects of the matter were considered by the Bench. In any view of the matter, Government Pleader submitted that the point raised is covered by various decisions of this court. Counsel referred to the unreported judgments of the Division Bench in W.A. No 1179 of 1994, W.A. No 2417 of 2006, W.A. No 41 of 2006 and also various other decisions.

4. The fact that the review petitioner continued to be registered owner of the vehicle is not disputed. The fact that the registration of the vehicle was not transferred to the first respondent is rather admitted. As per Section 50 of the Motor Vehicles Act, 1988 where the ownership of any motor vehicle registered under Chapter IV of the Act is transferred, the transferor shall in the case of a vehicle registered within the same State,

within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee and the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle normally kept and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration. Rule 55 of the Central Motor vehicles Rules, 1989 states that where the ownership of a motor vehicle is transferred, the transferor shall report the fact of transfer in Form 29 to the registering authorities concerned in whose jurisdiction the transferor and the transferee reside or have their place of business. An application for the transfer of ownership of a motor vehicle shall be made by the transferee in Form 30 accompanied by the documents mentioned in the Rule. Transferee did not submit any application for transfer of ownership in Form 30 as required under Rule 55. Therefore, the Bench has rightly taken the view that there was no valid transfer of the

vehicle as alleged. During the period for which tax is demanded the review petitioner is the registered owner of the vehicle.

5. Section 3 (1) of the Kerala Motor Vehicles Taxation Act, 1976 a tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified for such vehicle in the schedule. According to sub-section (3) of Section 3 of the said Act, the registered owner of, or any person having possession or control of, a motor vehicle shall, for the purpose of the Act, be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under sub-section (1) of Section 5. As per sub-sections (1) and (3) of Section 3 of the Kerala Motor Vehicles Taxation Act, 1976 the review petitioner being the registered owner of the vehicle is liable to pay tax in respect of the vehicle.

6. Section 9 of the Kerala Motor Vehicles Taxation Act deals with liability to payment of tax by persons succeeding to the ownership, possession or control of motor vehicles. As per sub-section (1) if the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof and such person before payment of the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle

has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax. Sub-section (2) of Section 9 states that nothing contained in sub-section (1) shall be deemed to affect the liability to pay the said tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle. Cumulative effect of Section 3 along with Section 9 of the Act is that both the registered owner of the vehicle or any person having possession or control of the vehicle are all liable to pay motor vehicle tax in respect of the vehicle in question.

7. We are of the view, assuming that the review petitioner is ceased to be in possession of the vehicle and sub-section (1) of Section 9 would enable the authorities to levy tax from the person who is in possession or control of the vehicle that does not mean the registered owner though not in possession can escape from the liability. Argument raised on rebuttable presumption is also not sound. We are of the view the liability of the registered owner and the person who is in possession or control of the vehicle is joint and several. We are of the view, so far as review petitioner continues to be registered owner he is equally liable just like a person who is in possession and control of the vehicle. Review petitioner cannot import the provisions of the Sale of Goods Act to raise a contention that in fact

there was transfer of the vehicle from the registered owner. Registered owner has been defined in Section 2 (e) of the Act which means the person in whose name a motor vehicle is registered or deemed to be registered under the Motor Vehicles Act, 1939. Section 3 deals with levy of tax and Section 4 deals with payment of tax and issue of licence. Section 9 deals with liability to payment of tax by persons succeeding to the ownership, possession or control of motor vehicle. On a conjoint reading of all the provisions it is clear that the liability is joint and several on the registered owner, person who is in possession or the person who is in control of the vehicle.

8. We may in this connection refer to the decision of a learned single judge of this court in Basheer v. State of Kerala (1997 (2) KLT 155) wherein learned judge has taken the view that the liability rests on the registered owner and the person having possession or control of the vehicle and is joint and several. That does not mean liability of the transferor or the person who is ceased to be in possession is effaced. We fully endorse the view of the learned single judge. In this connection we may also refer to the decision of another single judge in Kunji Mohammed v. R.T.O. Malappuram (2000 (1) KLT Sh. Notes page 68) wherein learned judge interpreting section 9 held that the liability of a registered owner who had

transferred the ownership or possession of the vhehicle to pay the tax does not cease at all by reason of transfer of ownership or possession unless the same has been intimated to the registering authority and change effected. A Division Bench of this court in N.P.R. Finance Ltd v. State of Kerala (2002 (1) KLT 591) interpreting Section 9 of the Kerala Motor Vehicles Taxation Act held that financier who is in control of the vehicle is liable to pay the amount due by way of arrears of tax. In view of the aforementioned legal position, we find no reason to review the judgment. Review petition therefore lacks merits and is hereby dismissed.

Sd/-
K.S. RADHAKRISHNAN
Ag. Chief Justice

Sd/-
M.N. KRISHNAN
Judge

02/02/2007
en/

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